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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130722647-4403-02 ]

RIN 0648-BD55

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-13-02 of the Inter-American Tropical Tuna Commission (IATTC or the Commission) by specifying limits on U.S. commercial catch of Pacific bluefin tuna from the eastern Pacific Ocean (EPO) waters of the IATTC Convention Area in 2014. This action is necessary for the United States to satisfy its obligations as a member of the IATTC to conserve Pacific Bluefin tuna, which is an overfished stock.

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the Regulatory Impact Review (RIR), environmental assessment (EA), final regulatory flexibility analysis (FRFA), and the proposed rule, are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2013-0119. These documents, and the small

entity compliance guide prepared for this final rule, are also available from the Regional Administrator, NMFS, West Coast Regional Office, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA. 98115-0070. A summary of the initial regulatory flexibility analysis (IRFA) is included in the proposed rule, and a summary of the FRFA is included in this final rule.

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, 562-980-3231, or Heidi Taylor, NMFS, 562-980-4039.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 10, 2014, NMFS published a proposed rule in the Federal Register (79 FR 1810) that would add regulations at 50 CFR part 300, subpart C, to implement Resolution C-13-02, “Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean,” which was adopted by the IATTC at its 85<sup>th</sup> Meeting, in June 2013. The proposed rule was open to public comment through February 10, 2014. The comments received are addressed in this rule.

The final rule is implemented under the authority of the Tuna Conventions Act (16 U.S.C. 951-962 and 971 et seq.), which directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate such regulations as may be necessary to implement resolutions adopted by the IATTC. The Secretary’s authority to promulgate such regulations as may be necessary to carry out the obligations of the United States has been delegated to NMFS.

The proposed rule includes additional background information, including information on the IATTC, the international obligations of the United States as an IATTC Member, and the basis for the new regulations.

##### New Regulations

This final rule establishes 2014 limits on catch of Pacific bluefin tuna (Thunnus orientalis) in the IATTC Convention Area. Once Pacific bluefin tuna catch limits have been reached, NMFS will prohibit any further targeting, retaining on board, transshipping, or landing of Pacific bluefin tuna in the Convention Area, because these activities can be effectively verified for enforcement purposes. The following section includes a description of how the Pacific bluefin tuna catch limit provisions apply under three possible scenarios.

#### 2014 Catch Limits for Pacific Bluefin Tuna

Once the Commission-wide commercial catch limit of 5,000 metric tons has been reached and the U.S. commercial fleet is expected to be reached or has exceeded the 500 metric tons catch limit, then targeting, retaining on board, transshipping, or landing of Pacific bluefin tuna by all U.S. commercial vessels in the IATTC Convention Area shall be prohibited for the remainder of 2014. If the U.S. commercial fishing fleet has not caught 500 metric tons of Pacific bluefin tuna in the Convention Area in 2014 when the Commission-wide 5,000 metric tons catch limit is reached, then the U.S. commercial fleet may continue to target, retain, transship, or land Pacific bluefin tuna until the 500 metric ton limit is reached. The U.S. commercial fleet may continue to target, retain, transship, or land more than the 500 metric tons of Pacific bluefin tuna in 2014 unless and until the Commission-wide catch limit of 5,000 metric tons is reached.

#### Announcement of the Limits Being Reached

To ensure that the total catch of Pacific bluefin tuna taken from the IATTC Convention Area does not exceed the Commission-wide catch limit for 2014, NMFS will report U.S. catch to the IATTC Director on a monthly basis. The IATTC Director will inform the IATTC Members and Cooperating non-members (collectively, CPCs) when 50 percent of the Commission-wide limit is reached. The Director will likewise send similar notices when 60, 70, and 80 percent of

the Commission-wide limit is reached. When 90 percent of the Commission-wide limit is reached, the Director will send the corresponding notice to all CPCs, with a projection of when the 5,000 metric ton Commission-wide limit will be reached, at which time CPCs are expected to take the necessary internal measures to avoid exceeding the limit. NMFS will provide updates on Commission-wide and U.S. catches to the public via the IATTC and coastal pelagic species email distribution lists and the West Coast Region website:

[http://www.westcoast.fisheries.noaa.gov/fisheries/migratory\\_species/bluefin\\_tuna\\_harvest\\_status.html](http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html). Additionally, NMFS will report preliminarily estimated Pacific bluefin tuna catch between monthly intervals (if and when catches approach the limits) to help participants in the U.S. commercial fishery plan for the possibility of the catch limit being reached.

When NMFS is informed that the 5,000 metric ton Commission-wide limit has been met (based on information provided by the IATTC Director) and that the 500 metric ton catch limit is expected to be reached (based on landings receipts, data submitted in logbooks, and other available fishery information), NMFS will publish a notice in the Federal Register announcing that the targeting, retaining, transshipping or landing of Pacific bluefin tuna will be prohibited on a specified effective date through December 31, 2014. Upon that effective date, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land any additional PBF in the Convention Area during the period specified in the announcement. Any PBF already on board a fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the effective date.

Public Comments and Responses

NMFS received eight written public comments. The Department of the Interior submitted comments on behalf of the National Park Service. One commenter expressed concern about matters beyond the scope of this action. Seven commenters expressed concern for the status of the resource. None of the seven commenters opposed placing restrictions on the U.S. catch of Pacific bluefin tuna; however, six of them suggested further restricting the U.S. catch of Pacific bluefin tuna. Summaries of the comments received and NMFS' responses appear below.

Comment 1: The proposed rule is not consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because it does not prevent overfishing by addressing the relative impacts of the U.S. fleet.

Response: NMFS is promulgating this rule in accordance with IATTC Resolution C-13-02 and under the authority of the Tuna Conventions Act. This action is not subject to the Magnuson-Stevens Act. However, NMFS informed the Pacific Fishery Management Council and the Western Pacific Fishery Management Council of the stock status determination and obligations under section 304(i) of the Magnuson-Stevens Act to develop and submit recommendations to NMFS and/or the Secretary of State for domestic and international actions that will end overfishing in the fishery and rebuild the affected stock taking into account the relative impact of U.S. vessels and that of foreign vessels on the stock.

Comment 2: The proposed rule indicates that NMFS only analyzed two alternatives. More alternatives, including a suspension of bluefin fishing, should have been analyzed.

Response: The preamble of the proposed rule included a discussion of only two alternatives as part of the IRFA summary: the proposed rule and no action. The purpose of the IFRA is to determine whether the action would have a significant economic impact on a substantial number of small entities. No other significant alternatives accomplished the stated

objectives of the applicable statutes and minimized the economic impact of the proposed rule on affected small entities. In addition to the IRFA, NMFS prepared a draft EA and made it available for public comment with the proposed rule. The draft EA included several alternatives to the proposed action, including suspension of directed fishing for Pacific bluefin tuna in the eastern Pacific Ocean, and considered the potential effects of each alternative on the human environment (i.e., natural, social, and economic environment). The final EA is publicly available as a supporting document to this rule.

Comment 3: Catch data should be up-to-date. NMFS should not be reporting catch data that is more than 1 year old as “preliminary.”

Response: NMFS decided not to cite the U.S. catch of Pacific bluefin tuna in 2013 in the proposed rule because, at that time, the 2013 fishing season for Pacific bluefin tuna had not yet ended. U.S. catch reported in this final rule has been updated with “preliminary” data for U.S. commercial catch of Pacific bluefin tuna in 2013. “Preliminary” data is subject to change. NMFS adheres to strict guidelines for publishing fishery data in the interest of ensuring data quality and protecting confidential data. Due to changes in data reporting mechanisms, there has been a delay in the availability of the published data sets typically made available annually in the Pacific Fishery Management Council’s Highly Migratory Species Stock Assessment and Fishery Evaluation (SAFE) documents. In the meantime, and when publishing supporting information in rules, NMFS has been publishing data as “preliminary” only after it has been determined not to be confidential.

Comment 4: There are unacceptable levels of Pacific bluefin tuna mortality by overseas fleets and recreational fisheries. A Pacific-wide catch limit is needed and the 500 metric ton limit should include recreational catch. Additionally, the U.S. National Park Service (NPS)

recommends that NMFS include national park unit boundaries in Pacific bluefin tuna regulations with consideration for additional monitoring of effort and catch, recreational catch-and-release, and a moratorium on harvest of Pacific bluefin tuna until individual national park units request a harvest allocation.

Response: NMFS notes these recommendations going forward. However, they are beyond the scope of the IATTC resolution that this rule implements. NMFS acknowledges that the average annual Pacific bluefin tuna landings by U.S. commercial vessels fishing in the EPO represent roughly two percent of the average annual landings from all fleets commercially fishing in the EPO for years 2007 through 2011 (refer to Section 1.4 of the Environmental Assessment). This contribution to Pacific bluefin mortality by the U.S. commercial fishing fleet is even smaller when considering the levels of catch by all fisheries, Pacific-wide. While the United States is a member of both the IATTC and the Western and Central Pacific Fisheries Commission (WCPFC), a Pacific-wide catch limit would require complimentary action by the WCPFC. Suggestions for purely domestic fishery management actions—such as rules on Pacific bluefin fishing within U.S. national parks—would be better suited to the decision-making process of the appropriate fishery management councils and implementation under the authority of the Magnuson-Stevens Act.

#### Changes from the Proposed Rule

No substantive changes have been made to this rule since the proposed rule stage. Minor edits were made to the regulatory text to improve clarity. The authority citations for 50 CFR part 300 and subpart C are revised to identify more precisely the statutory citation for the Tuna Conventions Act as 16 U.S.C. 951 et seq.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is necessary for the conservation and management of Pacific bluefin tuna, and that it is consistent with the Tuna Conventions Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of-information requirements associated with the U.S. West Coast Highly Migratory Species Fishery Management Plan still apply. These requirements have been approved by the Office of Management and Budget under Control Number 0648-0204.

A final regulatory flexibility analysis (FRFA) was prepared. A copy of this analysis is available from the NMFS (see ADDRESSES). The FRFA incorporates the IRFA, and a summary of the analyses completed to support the action is included directly below.

The main objective of this rule is to establish catch limits to contribute to the conservation of the Pacific bluefin tuna stock. This rule applies to owners and operators of U.S. commercial fishing vessels that catch Pacific bluefin tuna in the IATTC Convention Area. Each vessel that is expected to be affected is considered a small business according to the Small Business Administration's revised size standards (78 FR 37398, July 20, 2013). Pacific bluefin tuna do not serve as the primary target species for any U.S. commercial vessels, but rather are incidentally or opportunistically caught by U.S. commercial vessels fishing in the EPO. Therefore, the action is not expected to have a significant or disproportional economic impact on these small business entities.

After NMFS determines that the limits are expected to be reached, NMFS will publish a notice in the Federal Register announcing that restrictions will be effective from the dates specified through the end of the calendar year. NMFS will take reasonable actions to inform vessel owners in advance of publishing, in a Federal Register announcement, the effective date for the restrictions on targeting, retaining, transshipping, or landing Pacific bluefin tuna captured in the IATTC Convention Area. In the event that the limit on Pacific bluefin tuna catch is reached in 2014, it will be the responsibility of the commercial vessel owner to ensure that no further targeting of Pacific bluefin tuna occurs, and that no additional Pacific bluefin tuna are retained on board, transshipped, or landed after the specified dates published in the Federal Register notice announcing that the annual limit is expected to be reached.

While this rule does not mandate any new “reporting” or “recordkeeping” requirements for the public, some compliance costs may be associated with these regulations if the restrictions on targeting, retaining, transshipping, or landing Pacific bluefin tuna in the IATTC Convention Area becomes effective in 2014 as a result of the commercial catch limits being reached. The Pacific bluefin tuna commercial catch limits are not expected to result in the cessation of fishing by U.S. commercial vessels for Pacific bluefin tuna in the Convention Area since the annual U.S. catches of Pacific bluefin tuna have not reached 500 metric tons in more than a decade. In the event of a closure under this rule, the cost of compliance would be de minimis. Compliance costs could consist of returning incidentally caught bluefin tuna to the ocean, forgoing associated profits, and potentially losing fishing opportunity if Pacific bluefin tuna are available to the U.S. fleet during a time when fishing for them has been prohibited.

The U.S. catch of Pacific bluefin tuna in the EPO represents a relatively minor component of the overall catch of Pacific bluefin tuna from the EPO. The average annual U.S.

catch of Pacific bluefin tuna was 106 metric tons for 1999 through 2013. Pacific bluefin tuna is commercially caught by U.S. vessels fishing in the EPO on an irregular basis. Most of the landings are made by small coastal purse seine vessels operating in the Southern California Bight with limited additional landings made by the drift gillnet fleet that targets swordfish and thresher shark. Lesser amounts of Pacific bluefin tuna are caught by surface hook and line and longline gear (typically less than .05 metric tons per year for these gear types combined). The number of purse seine vessels that have landed tuna in California averaged 197 annually from 1981 through 1990. However, from 2000 to 2013, no more than six small purse seiners have been registered with the IATTC to target Pacific bluefin tuna in the Convention Area each year. The landings data suggests that they opportunistically targeted Pacific bluefin tuna in alternate years since 2001.

For the purposes of the Regulatory Flexibility Act analysis, NMFS compared the effects of the Pacific bluefin tuna restrictions imposed by this rule to a no action alternative. No additional alternatives exist that accomplish the stated objectives of applicable statutes and that minimize the rule's economic impact on the affected small entities. Under the no action alternative, there would be no limit on U.S. commercial catches of Pacific bluefin tuna in the IATTC Convention Area. It is unlikely that any short-term economic benefit to U.S. commercial fisheries would be gained from not implementing Resolution C-13-02 because recent trends in Pacific bluefin tuna catch data indicate that it is unlikely that the U.S. catch limit will be reached. However, failing to adopt this rule would result in the United States not satisfying its international obligations as a member of the IATTC. Furthermore, implementing Resolution C-13-02 conserves Pacific bluefin tuna by limiting catches, thereby increasing the chances that

small entities will have continued opportunities to harvest this currently overfished stock in the EPO.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent to vessels that catch Pacific bluefin tuna in the IATTC Convention Area via the IATTC and coastal pelagic species email distributions lists. The guide and this final rule will be available upon request and on the West Coast Region website:

[http://www.westcoast.fisheries.noaa.gov/fisheries/migratory\\_species/bluefin\\_tuna\\_harvest\\_status.html](http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html).

## List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: May 9, 2014.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 is revised to read as follows:

Authority: 16 U.S.C. 951 et seq., 16 U.S.C. 1801 et seq., 16 U.S.C. 5501 et seq., 16 U.S.C. 2431 et seq., 31 U.S.C. 9701 et seq.

#### Subpart C—Eastern Pacific Tuna Fisheries

2. The authority citation for 50 CFR part 300, subpart C, is revised to read as follows:

Authority: 16 U.S.C. 951 et seq.

3. In § 300.24, paragraph (u) is added to read as follows:

§ 300.24 Prohibitions.

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(u) Use a United States commercial fishing vessel in the IATTC Convention Area in contravention of §300.25(h)(4).

4. In § 300.25, paragraph (h) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

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(h) Pacific bluefin tuna commercial catch limits in the eastern Pacific Ocean. (1) For the calendar year 2014, all commercial fishing vessels of IATTC member countries and cooperating non-member countries collectively are subject to a limit of 5,000 metric tons of Pacific bluefin tuna that may be captured, retained, and landed in the Convention Area.

(2) Notwithstanding the collective 5,000 metric ton limit, in calendar year 2014 commercial vessels of the United States may capture, retain, transship, or land 500 metric tons of Pacific bluefin tuna.

(3) After NMFS determines that the limits under paragraphs (h)(1) and (2) of this section are expected to be reached by a future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice of closure in the Federal Register announcing the effective date that additional targeting, retaining on board, transshipping or landing Pacific bluefin tuna in the Convention Area shall be prohibited as described in paragraph (h)(4) of this section.

(4) Beginning on the date announced in the notice of closure published under paragraph (h)(3) of this section through the end of the calendar year, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land any additional Pacific bluefin tuna captured in the Convention Area. Any Pacific bluefin tuna already on board a

fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such tuna is landed within 14 days after the effective date published in the notice of closure.

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